

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF:**

**APPLICATION FOR CERTIFICATION FOR THE  
SAN FRANCISCO ELECTRIC RELIABILITY  
PROJECT**

**DOCKET No. 04-AFC-1**

**RULINGS RE:**

**CARE's MOTION TO STRIKE REPLY BRIEFS OF STAFF AND APPLICANT  
- AND -  
SARVEY'S REQUEST FOR COMMITTEE CONFERENCE**

**I. BACKGROUND**

**A. Improper filing of Briefs**

The major parties in the case have all recently failed to properly file and/or serve briefs. At the May 31, 2006, evidentiary hearing, the Hearing Officer directed that all parties in the case would file opening briefs by close of business on June 26, 2006, and file reply briefs on July 10, 2006 (5/31/06 RT 269:21-25.)

On June 26<sup>th</sup>, Applicant served its opening brief on all parties in an untimely manner (53 minutes after the close of business) and in violation of the Hearing Officer's directive. Intervenor CARE and Sarvey failed to properly serve their opening briefs on Applicant's attorney. This was a violation of the Committee's *Order Granting Petition to Intervene (Financial Hardship)*, issued in regards to Intervenor Sarvey and CARE on June 22, 2004, and July 9, 2004, respectively. Those virtually identical orders required each of the Intervenor to directly serve all filings upon those shown on the Proof of Service list for this case. On July 10, 2006, Energy Commission staff failed to

timely file its reply brief, in violation of the Hearing Officer's direction, filing 24 hours after the deadline.

#### B. Procedural Responses

On June 26, 2006, Intervenor CARE and Sarvey filed a Joint Motion to strike Applicant's opening brief. The Committee denied the Joint Motion on July 5, 2006, and on July 10<sup>th</sup> CARE appealed the Committee denial to the full Commission. The appeal will be heard at the Commission August 2, 2006 Business Meeting.

On July 13, 2006, CARE moved to strike the reply brief of the Energy Commission staff on the grounds that the brief failed to meet the required filing deadline of July 10, 2006, and that as a result CARE was prejudiced by the delay. In the same motion CARE also seeks to strike *Applicant's* reply brief, on the grounds that CARE's previous motion to strike Applicant's *opening brief* is under appeal to the full Commission and is therefore subject to being struck from the record. In addition, on July 13, 2006, Intervenor Sarvey filed his *Request for Committee Conference*. Sarvey argues the Committee, "...has lost control of this siting case."

## II. Rulings

Regarding its request to strike the untimely filed reply brief of Commission staff, CARE's Motion is DENIED.

Regarding CARE's motion to strike Applicant's properly filed reply brief, the motion is DENIED.

Regarding Sarvey's request for a Committee Conference, the request is DENIED. However, Intervenor Sarvey may address the full Commission on this matter on August 2, 2006.

All three of the above matters are referred to the full Commission and will be considered at the regularly scheduled Business Meeting on August 2, 2006.

Dated July 17, 2006, at Sacramento, California.

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JAMES D. BOYD  
Commissioner and Presiding Member  
San Francisco Electric Reliability Project AFC Committee

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JOHN L. GEESMAN  
Commissioner and Associate Member  
San Francisco Electric Reliability Project AFC Committee